

New Hampshire Department of Revenue Administration Fiscal Note Quick Guide

16-2459

HB 1385-FN-A, *relative to the sale or exchange of an interest in a business organization under the business profits tax.*

House Way & Means Committee

This proposed bill repeals and reenacts RSA 77-A:4, XIV to limit the inclusion in the business profits tax the net increase in basis of business assets due to certain sales or exchanges of an interest or beneficial interest in a business organization.

Section 1(a) of this bill establishes the taxability of the increase in the basis of the assets of the business organization applicable to business organizations when an interest or beneficial interest in the business organization is sold or exchanged.

Section 1(b) of this bill allows for business organizations to make an irrevocable election to not recognize the basis increase required under subparagraph (a). When the business organization elects not to recognize the basis increase the business organization will not be required to make an addition to the gross business profits in the tax period in which the sale or exchange occurs. The business organization shall not be allowed to deduct depreciation or amortization on the increased basis in any subsequent period and it shall also not be allowed to recognize the increase in the basis of the assets upon the disposition of the asset.

If the proposed legislation had been in effect over the previous five tax years, state revenues could have been decreased as follows; to the extent an election was made:

Tax Year 2010 \$ 1.9 million

Tax Year 2011 \$ 0.9 million

Tax Year 2012 \$13.3 million

Tax Year 2013 \$ 6.6 million

Tax Year 2014 \$ 3.8 million (note; incomplete tax year).

The above numbers are based upon reported sale transactions that resulted in increase basis adjustments and the subsequent tax paid thereon. However, it is not possible to predict how many interest holders will engage in the sale or exchange of their interest at some time in the future. It is also not possible to predict whether a business organization will choose to make the election provided for in Section 1(b). But, to the extent interest holders engage in sale or exchange transactions that result in otherwise taxable basis adjustments at the business entity level, an election by a business entity to forgo recognition of the basis adjustment will result in forgone revenues in the year the transaction takes place.

The effective date of this bill is July 1, 2016 and it is applicable to any sales or exchanges of an interest in a business organization that occurs on and after July 1, 2016.